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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1056-21**

RENEE S. WAGNER,
individually and as the
Guardian ad Litem for
C.W. and J.W. (minor
children), and **FRANCOIS
SIMON,**

Plaintiffs-Appellants,

v.

**STATE OF NEW JERSEY,
DIVISION OF NEW JERSEY
STATE POLICE, and
TROOPER I P. WYNN, a
member of the New Jersey
State Police,**

Defendants-Respondents.

Submitted March 1, 2023 – Decided July 18, 2023

Before Judges Vernoia and Natali.

On appeal from the Superior Court of New Jersey, Law
Division, Warren County, Docket No. L-0409-14.

George T. Daggett, attorney for appellants.

Matthew J. Platkin, Attorney General, attorney for respondents (Sookie Bae-Park, Assistant Attorney General, of counsel; Eric Intriago, Deputy Attorney General, on the brief).

PER CURIAM

Plaintiffs, Renee S. Wagner (plaintiff),¹ individually and on behalf of her two minor children, C.W. and J.W.,² and Francois Simon, appeal from an order granting summary judgment to defendants State of New Jersey, Division of the New Jersey State Police, and New Jersey State Trooper Patrick Wynn (Wynn),³ on plaintiffs' claims Wynn assaulted and falsely arrested plaintiff at her home in March 2014. Plaintiffs also appeal from an order denying their motion for reconsideration of the summary judgment order. Based on our review of the record, the parties' arguments, and the applicable legal principles, we affirm in part and reverse in part the court's summary judgment order and remand for

¹ For ease of reference, we refer to Renee S. Wagner as "plaintiff" throughout this opinion because the factual circumstances pertinent to the issues presented on appeal pertain exclusively to her. Where appropriate, we refer to Renee S. Wagner and the other plaintiffs collectively as "plaintiffs."

² We refer to the minor children by their initials to protect their privacy.

³ In the pleadings filed in the trial court and on appeal, Wynn's first name is not included. He is instead referred to as "New Jersey State Trooper I P. Wynn." Wynn testified at trial and identified himself as "Patrick Wynn." We therefore refer to him as such here.

further proceedings. We find it unnecessary to address plaintiffs' arguments challenging the court's order denying their reconsideration motion.

I.

In March 2014, New Jersey State Police Troopers arrested plaintiff for obstruction and resisting arrest at her home and in the presence of her two children, C.W. and J.W., and her mother, Francois Simon. A grand jury later charged plaintiff in an indictment with third-degree resisting arrest by attempting to prevent a law enforcement officer from effecting an arrest by using or threatening "to use physical force or violence against the law enforcement officer" in violation of N.J.S.A. 2C:29-2(a)(3)(a). Plaintiff was later tried before a jury on the third-degree offense charged in the indictment and two disorderly persons offenses: obstruction by preventing or attempting to prevent a public servant from performing an official function "by means of force" and by refusing to comply with commands in violation of N.J.S.A. 2C:29-1(a);⁴ and hindering

⁴ The complaint-summons cites N.J.S.A. 2C:29-1(b) for the obstruction offense charged against plaintiff and charges plaintiff with committing a disorderly persons offense. In pertinent part, however, N.J.S.A. 2C:29-1(b) provides only that an offense committed under N.J.S.A. 2C:29-1(a) is a disorderly persons offense if it is not committed by an actor who "obstructs the detection or investigation of a crime or the prosecution of a person for a crime." N.J.S.A. 2C:29-1(b). Where an obstruction offense is committed under those circumstances, it is a fourth-degree offense. *Ibid.* We therefore refer to N.J.S.A.

her own apprehension by providing false information in an attempt to conceal her identity in violation of N.J.S.A. 2C:29-3(b)(4).

A jury found plaintiff not guilty of the disorderly persons offense of obstruction by preventing or attempting to prevent a public servant from performing an official function "by means of force" and by refusing to comply with commands in violation of N.J.S.A. 2C:29-1(a). The jury also found plaintiff not guilty of third-degree resisting arrest by using or attempting to use physical force against a law enforcement officer under N.J.S.A. 2C:29-2(a)(3)(a), as charged in the indictment, but the jury found plaintiff guilty of the lesser-included disorderly persons offense of purposely preventing or attempting to prevent a law enforcement officer from effecting an arrest in violation of N.J.S.A. 2C:29-2(a)(1). The jury further returned a guilty verdict on the disorderly persons offense of hindering her own apprehension by providing false information to a law enforcement officer in violation of N.J.S.A.

2C:29-1(a) as the statutory provision under which plaintiff was charged and tried for obstruction because: the offense was charged as a disorderly persons offense; a grand jury never indicted plaintiff for the fourth-degree offense; the court instructed the jury only on the disorderly persons offense; and the jury found her not guilty of the disorderly persons offense.

2C:29-3(b)(4).⁵ We affirmed plaintiff's convictions on her direct appeal. Wagner, slip op. at 10.

Plaintiffs filed a complaint against defendants asserting five causes of action arising from the arrest that led to plaintiff's criminal prosecution. Each of the causes of action was founded on the claim Wynn assaulted plaintiff and the New Jersey State Troopers, including Wynn, falsely arrested plaintiff.

The complaint alleged: Wynn went to the home in which plaintiff stayed with her children; Wynn was "irate" because plaintiff had refused his demand that she travel to a State Police barracks in connection with Wynn's investigation of an automobile accident in which plaintiff was involved; Wynn assaulted plaintiff when he arrived at her home; and Wynn falsely arrested plaintiff on "fabricated charges."⁶

⁵ As we explained in our decision on plaintiff's direct appeal from her convictions, plaintiff's judgment of conviction incorrectly states the jury convicted her of violating N.J.S.A. 2C:29-1(b) when, in fact, the jury acquitted her of that offense and convicted her of the disorderly persons offense of hindering her own apprehension by providing false information to a law enforcement officer in violation of N.J.S.A. 2C:29-3(b)(4). State v. Wagner, No. A-1686-16 (App. Div. Aug. 27, 2019) (slip op. at 10). We remanded for the court to correct the judgment of conviction, ibid., but we observe the judgment of conviction included in the record on this appeal has not been corrected.

⁶ The complaint also included separate causes of action for injuries allegedly suffered by plaintiff's children, C.W. and J.W., and plaintiff's mother, Francois

Defendants moved for summary judgment, arguing plaintiffs are barred from prosecuting the false arrest and assault causes of action under the United States Supreme Court's decision in Heck v. Humphrey, 512 U.S. 477 (1994), and under the doctrine of collateral estoppel. In Heck, the Court held that

when a state prisoner seeks damages in a [42 U.S.C.] § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his [or her] conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated. But if the district court determines that the plaintiff's action, even if successful, will not demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed, in the absence of some other bar to the suit.

[Id. at 487 (footnote omitted).]

In Bustamante v. Borough of Paramus, we considered whether a plaintiff's civil action for damages under common law tort claims for assault and battery and for a violation of civil rights in violation of 42 U.S.C. § 1983 against police officers who had arrested him were barred as a matter of law under Heck. 413 N.J. Super. 276, 284-85 (App. Div. 2010). In that case, defendants argued the

Simon, based on claims they witnessed the alleged false arrest and assault of plaintiff. The complaint also included a separate cause of action for punitive damages based on the alleged false arrest and assault.

plaintiff's civil causes of action for assault and battery were barred under Heck by the plaintiff's guilty plea to resisting arrest during the incident when the alleged assault and battery took place. Ibid.

We explained the plaintiff's civil causes of action were barred under Heck only if the "potential verdict in the civil cause 'would be inconsistent with [the plaintiff's] conviction'" in the criminal proceeding. Id. at 291 (quoting Nelson v. Jashurek, 109 F.3d 142, 146 (3d Cir. 1997)). We further noted that where an asserted civil cause of action "do[es] not seek to invalidate any element of the underlying criminal conviction," the civil cause of action "is not barred as a matter of law by Heck." Id. at 293.

In Bustamante, we held the plaintiff's assault, battery, and 42 U.S.C. § 1983 claims were not barred as a matter of law based on the plaintiff's guilty plea to resisting arrest because the plaintiff alleged the defendants assaulted, battered, and used excessive force against him following his arrest. Id. at 296-97. We reasoned the plaintiff's guilty plea to resisting arrest did not bar his civil causes of action because, "to the extent [the] plaintiff claimed [the] defendants used unlawful force by continuing to attack him after he was in custody, his 'action, . . . if successful, w[ould] not demonstrate the invalidity of any

outstanding criminal judgment against' him." Id. at 297 (first and second alterations added) (quoting Heck, 512 U.S. at 487).

Here, defendants argued before the motion court they were entitled to summary judgment on plaintiffs' false arrest and assault claims because those claims are based on facts inconsistent with the jury's findings supporting plaintiff's convictions for resisting arrest under N.J.S.A. 2C:29-2(a)(1) and hindering apprehension by providing false information to law enforcement officers under N.J.S.A. 2C:29-3(b)(4). The motion court agreed, finding plaintiffs' causes of action for assault and false arrest are inconsistent with the factual determinations essential to the jury's verdict that plaintiff committed the offenses of resisting arrest under N.J.S.A. 2C:29-2(a)(1) and hindering her own apprehension under N.J.S.A. 2C:29-3(b)(4).

In reaching that conclusion, the motion court engaged in a comparative analysis of the elements of the offenses for which plaintiff was convicted at her criminal trial and the elements of the causes of action — assault and false arrest — asserted in the civil complaint.⁷ The court determined the factual findings

⁷ We note the motion court erred in part in its analysis because it compared the elements of plaintiffs' cause of action for assault with elements of the disorderly persons offense of resisting arrest under N.J.S.A. 2C:29-1(a) and concluded plaintiff's "conviction" under N.J.S.A. 2C:29-1(a) required a finding she used

essential to establishing the elements of the offenses for which the jury found plaintiff guilty — resisting arrest and hindering apprehension — were necessarily inconsistent with the factual elements essential to plaintiffs' civil causes of action for false arrest and assault. It was for that reason the motion court determined plaintiffs' causes of action were barred under the Supreme Court's decision in Heck and under the doctrine of collateral estoppel.

The court entered an order granting defendants summary judgment. Plaintiffs filed a reconsideration motion, which the motion court denied in a memorializing order and accompanying written statement of reasons. Plaintiffs appeal from the motion court's orders.

II.

We review an order granting summary judgment de novo, "applying the same standard used by the trial court." Samolyk, 251 N.J. at 78. We determine

force against Wynn, and that finding is inconsistent with her assault cause of action against defendants. We need not address the merits of the motion court's analysis beyond noting it is based on the flawed premise the jury convicted defendant of violating N.J.S.A. 2C:29-1(a), and, thereby, the jury determined plaintiff used force against Wynn. As we have explained, the jury found defendant not guilty of that offense, and, for that reason alone, the court erred in its reliance on N.J.S.A. 2C:29-1(a) in its analysis under Heck. In any event, because we conduct a de novo review of the record on appeal from the court's summary judgment order, Samolyk v. Berthe, 251 N.J. 73, 78 (2022), it is unnecessary that we further detail the court's reasoning supporting its entry of the order.

whether "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." Gilbert v. Stewart, 247 N.J. 421, 442 (2021) (quoting Friedman v. Martinez, 242 N.J. 449, 471-72 (2020)).

An issue is genuine if "the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact." R. 4:46-2(c). In other words, if the "competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party[,]" then the movant is not entitled to summary judgment. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). In conducting our review of the summary judgment record, we consider the facts in the light most favorable to plaintiffs because they are the parties opposing the motion. Richter v. Oakland Bd. of Educ., 246 N.J. 507, 515 (2021); R. 4:46-2(c).

Prior to addressing plaintiffs' claims the motion court erred by granting defendants summary judgment, we first summarize the facts pertinent to the issues presented on appeal based on the motion record. In doing so, we view

the facts in the light most favorable to plaintiffs, as the non-moving parties.
Ibid.

It is undisputed that during the evening of March 26, 2014, Wynn and his partner, New Jersey State Trooper William Abendschoen (Abendschoen), traveled to a home they identified as plaintiff's residence to further investigate an automobile incident in which plaintiff was involved two weeks earlier. The officers wore New Jersey State Police winter uniforms while at plaintiff's home. The officers were informed by another individual that plaintiff resided in an apartment at the rear of the residence, and the officers then approached the apartment's sliding glass door.

The parties' respective versions of the facts, as reflected in their respective Rule 4:46-2 statements, diverge concerning what occurred after the officers arrived at the sliding glass door entryway to plaintiff's apartment. That is, the parties offer conflicting facts concerning the sequence and timing of Wynn's arrest of plaintiff, as well as Wynn's and plaintiff's alleged use of force during the events at plaintiff's home.

Plaintiffs assert that earlier in the evening of March 26, 2014, plaintiff returned a call from the State Police barracks concerning the accident investigation and informed Wynn she could not travel to the barracks at that

time but would visit the next morning to complete an accident report. According to plaintiffs, Wynn replied "you need to come down here right now" but plaintiff explained that was not possible because she had kids who "were getting ready for bed." Plaintiffs claim Wynn then asserted, "[w]ell, I know where you live[,] and I'll come find you."

Later that evening, plaintiff noticed a flashlight shining through the sliding glass door of her residence. She approached the door, opened it "a little bit," and Wynn asked for her name. According to plaintiffs, she replied "Melody Mae," "because she was frightened." Wynn then displayed a picture of plaintiff he obtained from the New Jersey Motor Vehicle Commission, and plaintiff told him her name was Renee Wagner.

According to plaintiffs, plaintiff then asked Wynn if she could first "put [her] dog in her crate" because if she "open[s] the door[,] [the dog is] going to run outside[.]" Plaintiffs aver that, at that point, plaintiff "went to shut the door to put the dog in her crate[.]" and Wynn "forced the door open, grabbed [her] by [her] arm[,] and flung [her] out onto the deck." Plaintiff "ended up on the ground" outside, with Wynn "wrestling, trying to get her hands[,] but she was lying on top of them."

Plaintiffs claim Wynn first told plaintiff she was under arrest after he pulled her through the door and threw her onto the deck. Thus, plaintiffs allege in their complaint against defendants that Wynn assaulted plaintiff prior to any attempt to place her under arrest, and that her subsequent arrest was founded on false allegations she resisted arrest and hindered her own apprehension.

As noted, defendants' version of the events differs. Defendants assert that when Wynn and Abendschoen first approached the sliding glass door, Wynn advised plaintiff he was there to investigate the accident, and plaintiff offered Wynn a false name — Melody Mae — when he asked her to identify herself. Defendants also claim plaintiff responded "defiant[ly]" and indicated "she wasn't willing to cooperate" with the investigation. Defendants further assert Wynn then warned plaintiff that "if she continued to be uncooperative with the investigation, she would be placed under arrest[.]"

According to defendants, plaintiff at that time "deliberately attempted to close the sliding glass door," and, in response, Wynn "attempted to restrain [plaintiff from] obstructing justice and hindering her own apprehension" by using force to place her under arrest. Defendants aver plaintiff physically resisted Wynn's efforts to place her under arrest. It is undisputed plaintiff was

subsequently charged with resisting arrest, obstruction, and hindering her own apprehension.

As we have explained, a jury later found plaintiff guilty of hindering her own apprehension under N.J.S.A. 2C:29-3(b)(4) by providing false information — the fake name — to Wynn. The jury also convicted plaintiff of resisting arrest by preventing or attempting to prevent Wynn from effecting an arrest under N.J.S.A. 2C:29-2(a)(1). Pertinent here, the jury found plaintiff not guilty of: obstructing the administration of law by means of force under N.J.S.A. 2C:29-1(a); and resisting arrest by using or threatening the use of physical force or violence against a law enforcement officer under N.J.S.A. 2C:29-2(a)(3)(a). In other words, in its determination of the criminal and disorderly persons offenses against plaintiff, the jury rejected the State's claim plaintiff improperly used force against Wynn.

In their civil complaint, plaintiffs assert causes of action founded on a claim Wynn assaulted plaintiff. Defendants argue, and the motion court found, the claims were barred under the principles in Heck because the factual findings required to support plaintiffs' assault claims are inconsistent with jury's determination of plaintiff's guilt on the charges at trial.

More particularly, defendants argue plaintiffs' cause of action for assault is based on a claim Wynn used excessive force during plaintiff's arrest. Defendants reason that because individuals may use reasonable force to protect themselves from excessive or unnecessary force used by a law enforcement officer effecting an arrest, see Bustamante, 413 N.J. Super. at 295-96, plaintiff's convictions at trial were necessarily based on determinations Wynn did not use excessive force during plaintiff's arrest, but rather that plaintiff used unreasonable force against Wynn.

In further support of their contention, defendants also rely on our finding in Bustamante that, "to the extent plaintiff's claims involved defendant's use of force in effectuating [the] arrest, . . . they are barred [under Heck] because a favorable outcome in the civil action would be inconsistent with the" factual determinations supporting her convictions at trial. Id. at 295. Defendants assert our finding in Bustamante applies here because "the clear text of the statutes [plaintiff] was convicted of violating . . . clearly define the offense[s] in a manner that contemplates force." Defendants also claim their argument is buttressed by our finding on plaintiff's direct appeal from her convictions that "[t]here is no evidence in the record from which a rational jury could find the

arresting officer employed unlawful force to arrest defendant." Wagner, slip op. at 10.

We reject defendants' claim plaintiffs' causes of action based on Wynn's alleged assault of plaintiff are barred under Heck or our decision in Bustamante. Contrary to defendants' claim, there is nothing in plaintiff's convictions at the criminal trial supporting findings she either used force against Wynn or used unreasonable force against him while he was effecting her arrest. As we have explained, neither of the disorderly persons offenses for which plaintiff was convicted include use of force as an essential element. See N.J.S.A. 2C:29-

2(a)(1)⁸ and N.J.S.A. 2C:29-3(b)(4).⁹ Thus, unlike in Bustamante, where the defendant's guilty plea to resisting arrest constituted an acknowledgement the defendants did not use unlawful force against him during his arrest, 413 N.J. Super. at 296, plaintiff's convictions at trial did not require, or by necessity include, any determination she used force against Wynn.

Moreover, the jury rejected the State's claims plaintiff used force against Wynn and acquitted plaintiff of the offenses that required the State prove she

⁸ To convict plaintiff for the disorderly persons offense of resisting arrest under N.J.S.A. 2C:29-2(a)(1), the State was required to prove: Wynn was a law enforcement officer; Wynn was effecting an arrest; plaintiff knew or had reason to know Wynn was a law enforcement officer effecting an arrest; and plaintiff purposely prevented Wynn from effecting the arrest. Model Jury Charges (Criminal), "Resisting Arrest – Flight Not Alleged (N.J.S.A. 2C:29-2(a))" (rev. May 7, 2007). Where an individual is charged with a third-degree crime for resisting arrest under N.J.S.A. 2C:29-2, the State must also prove, in pertinent part, that the person used or threatened to use physical force against the law enforcement officer or another. N.J.S.A. 2C:29-2(a)(3)(a); Model Jury Charges (Criminal), "Criminal Resisting Arrest – Flight Not Alleged (N.J.S.A. 2C:29-2(a))" (rev. May 7, 2007). Here, in plaintiff's criminal trial, the jury found her not guilty of the third-degree offense, thereby rejecting the State's claim she used force against Wynn.

⁹ To convict plaintiff for violating N.J.S.A. 2C:29-3(b)(4), the State was required to prove: plaintiff knew she could or might be charged with an offense; she gave false information to a law enforcement officer; and she acted with the purpose of hindering her "detention, apprehension, investigation, prosecution, conviction, or punishment for" the offense. Model Jury Charges (Criminal), "Criminal Hindering One's Own Apprehension or Prosecution (N.J.S.A. 2C:29-3(b))" (rev. May 12, 2014).

used force. The jury found plaintiff not guilty of two charges for offenses — under N.J.S.A. 2C:29-2(a)(3)(a) and N.J.S.A. 2C:29-1(a)¹⁰ — that include force as an element. That is, the jury rejected any claim made by the State that plaintiff used force against Wynn in its determination of her guilt of the offenses charged. As a result, plaintiffs' success, if any, on their civil causes of action for assault will not be inconsistent with plaintiff's convictions at her criminal trial and thus are not barred under Heck. See Bustamante, 413 N.J. Super. at 293 (explaining the Court's holding in Heck does not bar civil claims as a matter of law where the plaintiff's proofs supporting their civil claims "do not seek to invalidate any element of the underlying criminal conviction").

The principles established in Heck also do not permit or require summary judgment for defendants on plaintiffs' assault-based claims because there is a genuine issue of material fact concerning the timing of Wynn's alleged use of

¹⁰ To prove plaintiff's guilt of obstruction under N.J.S.A. 2C:29-1(a), the State was required to prove: plaintiff "committed an act of flight, intimidation, force, violence, or physical interference or obstacle;" the act was committed with the purpose of obstructing, impairing, or perverting the administration of law or a governmental function, or preventing the performance of an official function; and that, in committing the act, plaintiff obstructed, impaired, or perverted the administration of law or a governmental function, or prevented the performance of an official function. Model Jury Charges (Criminal), "Obstructing Administration of Law or Other Governmental Function (N.J.S.A. 2C:29-1)" (approved Oct. 23, 2000).

force against plaintiff. See Brill, 142 N.J. at 540. Plaintiffs' factual assertions, which we must accept as true for purposes of determining defendants' summary judgment motion, Richter, 246 N.J. at 515; R. 4:46-2(c), establish Wynn assaulted plaintiff by grabbing her, pulling her out the door, and throwing her onto the deck prior to placing her under arrest, effecting her arrest, or stating he was placing her under arrest.

In Bustamante, we considered an order granting the defendants' Rule 4:6-2(e) motion to dismiss the plaintiff's common law tort claims and 42 U.S.C. § 1983 claim arising from a law enforcement officer's alleged use of excessive force during an incident involving the plaintiff's arrest. 413 N.J Super. at 282-83. We reversed the dismissal order in part because the plaintiff alleged facts establishing the police officer's alleged excessive force occurred at a time other than when the officer could lawfully use force to effect the plaintiff's arrest. Id. at 297-98. We therefore concluded the plaintiff's conviction by plea to resisting arrest did not preclude his civil excessive force causes of action as a matter of law under Heck because the plaintiff's criminal conviction for resisting arrest was not inconsistent with his civil claims arising from the officer's actions occurring at a time different than when police arrested him. Id. at 297.

Here, the summary judgment record presents an issue of material fact identical to that presented by the pleadings in Bustamante. Like the plaintiff in Bustamante, plaintiffs do not claim the law enforcement officer — Wynn — used excessive force while effecting plaintiff's arrest. Plaintiffs rather claim — and presented evidence in opposition to defendants' summary judgment motion demonstrating — Wynn assaulted plaintiff prior to his effectuation of her arrest. Thus, the record did not permit entry of summary judgment for defendants on plaintiffs' assault claims under Heck because there is a factual dispute as to whether the offenses for which plaintiff was convicted — none of which are inconsistent with a finding Wynn assaulted her — occurred at a time different than when Wynn was effectuating plaintiff's arrest. Cf. *ibid.*

We are unpersuaded by defendants' claim that the statement in our decision on plaintiff's direct appeal from her convictions — that there was no evidence presented at the criminal trial permitting a rational jury to find Wynn "employed unlawful force to arrest defendant" — requires a determination that Heck bars plaintiffs' assault claims. Defendants' reliance on the statement is misplaced.

In our opinion on plaintiff's direct appeal, we considered only whether the evidence supported her convictions and whether the court properly charged the

jury. We were not required to determine the propriety of Wynn's use of force during the entirety of his interactions with plaintiff; our statement is expressly limited to the "record" presented at the criminal trial; and our conclusion pertains only to Wynn's use of force "to arrest [plaintiff]." Wagner, slip op. at 10. The statement does not constitute a determination binding on this appeal where a different record — the summary judgment motion record — shows plaintiff was assaulted at a time other than when Wynn effectuated her arrest. Our statement offered no opinion on that issue because it was irrelevant to any of the arguments presented on plaintiff's direct appeal.

In sum, we reject defendants' reliance on Heck as a basis for finding plaintiffs' assault claims barred as a matter of law. For the same reasons, we also reject defendants' contention that plaintiffs' assault claims are barred under the doctrine of collateral estoppel.

Collateral estoppel precludes relitigation of an issue if: "(1) the issue to be precluded is identical to the issue decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the court in the prior proceeding issued a final judgment on the merits; (4) the determination of the issue was essential to the prior judgment; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party in the prior

proceeding." Olivieri v. Y.M.F. Carpet, Inc., 186 N.J. 511, 521-22 (2006) (quoting In re Est. of Dawson, 136 N.J. 1, 20-21 (1994)).

Defendants argue plaintiffs' assault claims are barred by collateral estoppel because the identical issue — whether Wynn assaulted plaintiff — was presented and decided by the jury at plaintiff's criminal trial. Defendants contend that, by finding plaintiff guilty of hindering her own apprehension by providing a false name to Wynn and resisting arrest, without plaintiff using any force to do so, the jury concomitantly determined Wynn did not assault plaintiff as alleged in the civil complaint.

We find no identity of the issues decided by the jury in the criminal case and those presented by plaintiffs' causes of action for assault. For the reasons we have explained, the offenses for which plaintiff was convicted did not require that the jury make any findings pertaining to the use of force, and the jury was not otherwise required to make any findings as to whether Wynn assaulted plaintiff. Additionally, defendants' collateral estoppel argument is based on the same flawed factual premise on which their argument under Heck is in part founded — that the assault on which plaintiffs' claims are based occurred while Wynn effected plaintiff's arrest. Again, there is a factual dispute as to whether

Wynn allegedly assaulted plaintiff at that time or prior to her arrest, and the criminal jury did not decide that issue.

For those reasons, we reject defendants' claim that plaintiffs' assault claims are barred under the doctrine of collateral estoppel. The record simply lacks any evidence the jury at plaintiffs' criminal trial decided the identical issue — whether Wynn assaulted plaintiff — as alleged in plaintiffs' complaint.

We therefore reverse the motion court's order granting summary judgment on plaintiffs' assault claims in the complaint. We remand for further proceedings on those claims. Our reversal of the order should not be interpreted as expressing an opinion on the merits of the claims. We determine only that, based on the summary judgment record, defendants did not sustain their burden of demonstrating the undisputed facts establish their entitlement to summary judgment as a matter of law on the assault claims. Brill, 142 N.J. at 540.

We are not similarly convinced the court erred by granting defendants summary judgment on plaintiffs' causes of action for false arrest. The complaint alleges Wynn falsely arrested plaintiff at her home on March 26, 2014. Plaintiffs contend the court erred by finding the claim barred by Heck and the doctrine of collateral estoppel. We disagree.

An actionable "false arrest arises where the aggrieved party is arrested without legal authority, as where he [or she] is arrested pursuant to process that is void." Mesgleski v. Oraboni, 330 N.J. Super. 10, 24 (App. Div. 2000). "The tort requires an arrest or detention of the person against his or her will; and lack of proper legal authority or 'legal justification.'" Ibid. (quoting Barletta v. Golden Nugget Hotel Casino, 580 F.Supp. 614, 617 (D.N.J.1984)). An individual has a defense to a cause of action for false arrest where the individual has probable cause to make the arrest at the time the arrest is made. Ibid.; see also Bauer v. Borough of Cliffside Park, 225 N.J. Super. 38, 47 (App. Div. 1988).

Based on our review of the summary judgment record, we are convinced plaintiff's convictions at her criminal trial bar her false arrest claims under Heck. The jury found plaintiff guilty of resisting arrest and hindering her own apprehension, offenses for which Wynn arrested her on March 26, 2014. The jury's finding plaintiff was guilty of those offenses further establishes there was probable cause for her arrest on that date because there was no evidence developed subsequent to plaintiff's arrest that the State relied on to support plaintiff's convictions.

To succeed on the false arrest claims, plaintiffs must prove there was either a lack of justification for the arrest or that Wynn lacked the legal authority to arrest plaintiff. Mesgleski, 330 N.J. Super. at 24. Plaintiffs cannot establish the latter because Wynn acted in his capacity as a law enforcement officer, and plaintiffs do not otherwise argue he lacked the legal authority to arrest plaintiff for the offenses for which she was convicted. As to the former, for plaintiff to prove there was a lack of justification for the arrest, plaintiff must establish facts inconsistent with the criminal jury's determination plaintiff was guilty of two offenses and the concomitant legal conclusion that there was probable cause for the arrest at the time it was made. Because such findings would be inconsistent with the jury's determination plaintiff was guilty of two separate offenses when Wynn arrested her at her home, plaintiffs' false arrest causes of action are barred under Heck. See Bustamante, 413 N.J. Super. at 290. We therefore affirm the motion court's summary judgment award to defendants on plaintiffs' false arrest claims.¹¹

Our determination the motion court erred by granting defendants summary judgment on plaintiffs' assault claims and correctly granted defendants summary

¹¹ We therefore find it unnecessary to address defendants' claim the false arrest claims are barred by collateral estoppel.

judgment on plaintiffs' false arrest claims renders it unnecessary to address or decide plaintiffs' argument the motion court erred by denying its motion for reconsideration of the summary judgment order.

Affirmed in part, reversed in part, and remanded for further proceedings on plaintiffs' claims founded on the allegation Wynn assaulted plaintiff. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION